A.F.R. (187)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

WRIT PETITION NO.1920 OF 2003

Harpal Singh Saini

Versus

State of Chhattisgarh & another

AND

WRIT PETITION NO.1921 OF 2003

Sanjay Kumar Tiwari

Versus

State of Chhattisgarh & another

POST FOR ORDER ON 2nd September, 2003

Sd/-
L.C.BHADOO
Judge

(188)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

WRIT PETITION NO.1920 OF 2003

PETITIONER: Harpal Singh Saini,
S/o Shri Maha Singh Saini,
Aged about 54 years,
Occupation: Service, presently posted as Officiating Sub Divisional Officer,
Vidhan Sabha Sub Division,
Raipur (C.G.)

Versus

RESPONDENTS:

1. State of Chhattisgarh,
Through: The Secretary,
Public Works Department,
Mantralaya, D.K.S. Bhawan,
Raipur (C.G.)

2. Engineer-in-Chief,
Public Works Department.
Government of Chhattisgarh,
Raipur (C.G.)

AND

WRIT PETITION NO.1921 OF 2003

PETITIONER: Sanjay Kumar Tiwari,
S/o Shri Sundar Lal Tiwari,
Aged about 42 years,
Occupation: Service, presently posted as Sub Divisional Officer (E/M),
P.W.D. Sub Division,
Dantewara (C.G.)

Versus

RESPONDENTS:

1. State of Chhattisgarh,
Through: The Secretary,
Public Works Department,
Mantralaya, D.K.S. Bhawan,
Raipur (C.G.)

2. Engineer-in-Chief,
Public Works Department.
Government of Chhattisgarh,
Raipur (C.G.)

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Present: -

Mr. Manindra Shrivastava, Advocate: For the petitioners

Mr. Sanjay K. Agrawal, Deputy Advocate General: For the State/respondents

Mr. P. Diwaker, Advocate: For the intervener

ORDER

(Passed on 22nd September, 2003)

L.C. Bhadoo, J

1. Both these writ petitions relate to the same issue. Therefore, they are being disposed of by this common order.

2. By this writ petition (W.P.No.1920 of 2003) under Article 226 of the Constitution of India, the petitioner has challenged the order No.Estt./3315798/02/ENC dated 21st November, 2002, issued by the Chief Engineer, Public Works Department, Chhattisgarh (respondent No.2), by which the educational qualification of the petitioner has been changed from degree to diploma. Similarly, the educational qualification of Sanjay Kumar Tiwari, the petitioner in W.P.No.1921 of 2003, has been changed from degree to diploma.

3. The petitioner's case (W.P.No.1920 of 2003) is that he was initially appointed on 13.03.1973 as Works Assistant and after ten months he was appointed as Sub-Engineer in Public Works Department. He is a diploma holder. The entire service record of the petitioner is unblemished and meritorious. For the purpose of promotion to the post of Assistant Engineer in the Department, relevant rules namely, Madhya Pradesh Public Works Engineering (Gazetted) Service Recruitment Rules, 1969, (hereinafter referred to as 'the Rules') provide that Sub-Engineers who have completed 12 years of service would be considered for promotion to the post of Assistant Engineer. The Rules further provide special quota separately for those Sub-Engineers who have obtained the B.E. Degree or equivalent. They are

eligible for being considered for promotion to the post of Assistant Engineer upon completing eight years of service and a fixed percentage of posts of Assistant Engineers is earmarked for this particular category of Graduate Engineers. The petitioner after seeking permission from the Department undertook the course of AMIME (Associate Membership of Institute of Mechanical Engineers of India) and passed the said examination. The certificate issued by the said Institute has been widely accepted and recognized not only in the erstwhile State of Madhya Pradesh as a degree equivalent to Bachelor of Engineering but, also in various parts of the country and also by the Department of Education, Ministry of Human Resources Development, Government of India vide notifications dated 26.05.1976, 06.10.1981 & 24.10.1981.

4. According to the petitioner in the erstwhile State of Madhya Pradesh, the Sub-Engineer who possessed AMIME Degree is being treated as equivalent to the holder of B.E. Degree and he is being given benefit of accelerated promotion under Graduate Engineer quota. The said degree of AMIME has been recognized all over the country in various States like Andhra Pradesh, Kerala, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan etc., and relevant documents are annexed as Annexure P-2. The State of Madhya Pradesh on 9th September, 1998, had issued a circular that 20% of the posts of Assistant Engineer in promotion quota would be filled up from amongst such Sub-Engineers who have obtained degree while in service, the circular is Annexure P-3 and consistent with the said circular the promotions were made from time to time.

5. The petitioner passed the above course and obtained the certificate dated 04.02.1997, which is Annexure P-4, and the same was submitted to the Department and relevant entries were made in the service record of the petitioner showing him as Graduate Engineer. The said entries are Annexure P-5. In the gradation list of Sub-Engineers

issued by the Department, the petitioner was clearly shown as Graduate Engineer at Serial No.8 as on 01.04.2001. A copy of the gradation list is Annexure P-8. A copy of the page showing the name of the petitioner at Serial No.89 of the gradation list as on 01.04.2000 is annexed as Annexure P-9. By virtue of provisions of M.P. Reorganization Act, 2000, the petitioner is entitled to be protected of all the terms and conditions of his service upon allocation to the State of Chhattisgarh and none of the terms and conditions of the service can be altered, affected, or changed to his prejudice though they can be changed to his advantage. The Department had issued the final gradation list on 20th November, 2002, also wherein the petitioner was shown as Graduate Sub-Engineer, which is memo Annexure P-10. The memo clearly shows that the gradation list has been prepared on the basis of gradation list dated 12.01.2002 issued by the State of Madhya Pradesh. However, vide impugned order dated 21.11.2002, suddenly without giving any notice to the petitioner and without giving any opportunity of hearing, to utter prejudice, he was shown as a Diploma Engineer meaning thereby that the status of Graduate Engineer has been taken away. The said order is Annexure P-11, which is wholly illegal, arbitrary and unconstitutional, resulting in alteration of the terms and conditions of the petitioner's service, against which the petitioner made a series of representations, but none of them have been considered so far. Now, the petitioner has learnt that the Department is holding a Departmental Promotion Committee Meeting for making promotions.

6. The said impugned order has been passed in violation of the principles of natural justice and it alters the terms and conditions of the service of the petitioner which is impermissible in view of protective provisions contained in M.P. Reorganization Act, 2000. The impugned order is otherwise wholly illegal, capricious and against the long standing recognition given to the holders of AMIME Degree which has always

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been treated to be equivalent to B.E. Degree in the matter of promotion. Therefore, a writ in the nature of certiorari to quash and set aside the impugned order be issued and a writ of mandamus commanding the respondents to restore the petitioner's status of Graduate Engineer and consider his case for promotion to the post of Assistant Engineer in the Graduate Engineer's quota as per the Rules of 1969 be issued.

7. Return has been filed on behalf of the State/respondents in which the respondents have disputed rather they have denied the fact that the erstwhile State of Madhya Pradesh has also issued circulars and notifications holding that the Diploma passed by a candidate from AMIME is equivalent to a Degree in Engineering from a recognized University. The statement of the petitioner is false and baseless. The petitioner has enclosed notifications of various States, but has not supported his case by a notification from the State of Madhya Pradesh. The case of the petitioner is totally different from the candidate having obtained a Degree from Associate Members Institute of Engineers, Kolkata, which has been considered to be equivalent to a Degree of Graduation from any other recognized University. However, in the instant case, the petitioner possesses only a diploma that too from an Institute known as AMIME and the said Diploma has not been notified either by the erstwhile State of Madhya Pradesh or by the newly formed State of Chhattisgarh. Until and unless the State Government categorically notifies that a Diploma from the said Institute (AMIME) is equivalent to a Degree, the petitioner would not be entitled for any relief.

8. The document referred by the petitioner i.e. the gradation list issued earlier dated 20.11.2002, whereby the qualification of the petitioner was shown as Degree in Engineering was amended and by virtue of the said impugned order it was shown that the petitioner was a diploma holder. Inadvertently, the answering respondents while preparing the

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gradation list and also in the correspondences believing that the diploma of the petitioner being equivalent to a degree, the qualification of the petitioner against his name in the gradation list and other documents was shown to be a Degree. However, when the said fact was detected by the answering respondents that the Diploma which the petitioner was holding was not notified either by the State of Madhya Pradesh or by the State of Chhattisgarh to be equivalent to a B.E. Degree, the gradation list and other documents wherein the petitioner was shown to be a Degree holder, were corrected and amended to the extent of holding that the petitioner is a Diploma holder.

9. The State of Madhya Pradesh has never issued any notification stating that the Diploma to be equivalent to a Bachelor's Degree in Engineering. Therefore, the statement of the petitioner is false, baseless and incorrect. When the fact was brought to the notice of the answering respondents, they had investigated into the matter and in the said course of investigation, the petitioner was also granted an opportunity of hearing and in the said enquiry, the petitioner had candidly admitted that he only possesses a Diploma from AMIME and that they are in the process of pursuing the matter at the Government level for the issuance of a notification treating the said Diploma to be equivalent to the Bachelor's Degree of Engineering. A copy of the said enquiry and the statement of the petitioner is marked as Annexure R-1. The fact that relevant entries made in the service record of the petitioner showing him to be a Graduate Engineer was under a wrong impression and the moment the said fact was brought to the notice of the answering respondents whereby it was found that the petitioner do not possesses the Bachelor's Degree of Engineering but was only a Diploma holder, necessary orders were issued for making necessary amendments in the service record, wherein the petitioner was earlier shown as a Degree holder was ordered to be corrected to be that the petitioner is a Diploma holder. It is not disputed that those Sub-

Engineers who have requisite qualification of being a graduate having Bachelor's Degree of Engineering, would be entitled for promotion to the post of Assistant Engineer and that the admitted position in the instant case is that the petitioner do not possess a Bachelor's Degree of Engineering and on the contrary it is also an admitted fact that the petitioner is a diploma holder and therefore, he cannot as on date be entitled for promotion to the post of Assistant Engineer.

10. The Government of Madhya Pradesh had issued an order dated 14th February, 1992, by which the Government of Madhya Pradesh has approved and recognised the certificates of Technician Engineers Part-I & Part-II issued by the Institution of Mechanical Engineers (India) as equivalent to Madhya Pradesh Polytechnic Diploma in Mechanical Engineering.

11. It is categorically submitted that before passing the order dated 21.11.2002, the answering respondents have conducted a detailed enquiry in the matter and the petitioner was also called upon to explain his status. A copy of the said enquiry proceedings is marked as Annexure R-1. Therefore, the petition deserves to be dismissed.

12. I have heard the learned counsel for the parties and perused the record.

13. It is not disputed, rather it is admitted position that as per the Rules, the Sub-Engineers who are Degree holders are entitled for accelerated promotion. Sub-rules (i) & (ii) of Rule 14 of the Rules provide the Conditions of eligibility for promotion viz.,

    (i) Junior engineers to the post of Assistant Engineers - A minimum service of two years as Junior Engineers.

    (ii) Overseers/Head Draftsman/Draftsman to the posts of Assistant Engineers - A minimum service of 12 years as Overseer/Head Draftsman/ Draftsman.

Schedule II of the Rules provides that Class-II posts are to be filled, 60% by direct recruitment and 40% by way of promotion and out of 40%, 33% by promotion among diploma holder Sub-Engineers; 4% by promotion of Graduate Sub-Engineers & Draftsmen; and 3% by promotion of Draftsmen/Head Draftsmen. As per Schedule IV of the Rules, Junior Engineers of eight years service are entitled for promotion as Assistant Engineer, Class-II and Overseers of twelve years service are entitled for promotion as Assistant Engineer, Class-II. Schedule III of the Rules, relates to educational qualifications which provides that a certificate or a degree in Civil/E/M of an Engineering College in India or an Engineering Institute approved by the State Government is recognized for the post.

14. The only dispute between the petitioners and the respondents, which requires determination by this Court, is that as to whether the certificate obtained by the petitioners (in both the petitions viz., W.P. Nos.1920/2003 & 1921/2003) from AMIME, Mumbai, has been recognized/ approved by the erstwhile State of Madhya Pradesh and the State of Chhattisgarh as equivalent to Degree. Admittedly, the petitioners have not been able to place on record any order of the Government of Madhya Pradesh by which the certificate of AMIME has been recognized as equivalent to Degree. Even during the course of arguments, a particular question was put to the counsel for the petitioners and the learned counsel for the petitioners very frankly admitted and submitted that the petitioners are not able to lay hand on any such notification of the Government recognizing the certificate of AMIME equivalent to Degree, whereas, the petitioners themselves have annexed orders of various Governments (Annexure P-II) by which they have recognized the certificate as equivalent to Degree. Merely on the basis that the said certificate has been recognized by the Ministry of Education & Culture, Government of India; Government of Andhra Pradesh; Government of Kerala; Government of Karnataka; and Govt. of

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Rajasthan, it cannot be held by any stretch of imagination that based on these orders of various State Governments and the Government of India, the certificates obtained by the petitioners can be considered to be equivalent to Degree by the State of Madhya Pradesh or State of Chhattisgarh, as has been held by the Hon'ble Apex Court in para-12 of the case of Director, AIIMS and others vs. Dr. Nikhil Tandon and others reported in (1996) 7 SCC 741 that,

> "the two years' training at Cambridge University undergone by Tandon while working for his Ph.D. cannot be treated as a qualification *recognised* as equivalent to DM. Schedule I to the AIIMS Recruitment Rules speaks of DM qualification or a qualification recognised as equivalent thereto. It is not mere equivalence that is enough. It must also be recognised as equivalent. Recognised evidently means recognised by the Institute or at least by the Medical Council of India. ----- It is un-understandable how the two years' research/training put in by Tandon while working for the said qualification can be counted as a qualification *recognised* as equivalent to DM. It may be equivalent; it may be more. But the question is whether it is recognised --- and admittedly it is not."

In para-13, it has further been held that,

> "the Institute was of the opinion that Tandon was qualified according to the Rules and forwarded his name for consideration by the selection committee, it amounts to 'recognition' of the said two years' training as a recognised equivalent qualification. Recognition must be by a general order/proceeding published for the information of all concerned. It cannot be a matter decided in a given case for the purpose of that case."

15. Therefore, as per the law laid down by the Hon'ble Apex Court, unless a particular certificate is recognised by the competent authority and an order is issued to that effect, made known to all, the certificate cannot be considered equivalent to Degree. Even Schedule III of the Rules, upon which the learned counsel for the petitioners has placed heavy reliance, provides that "**a certificate or degree in Civil/E/M of an Engineering College in India or an Engineering Institute approved by the State Government**" is required. Therefore, without approval of

the State Government merely by passing the examination and obtaining the certificate cannot be considered equivalent to Degree. The petitioners have not been able to lay hand on any order or circular of the Government by which AMIME has been approved and accepted equivalent to Degree.

16. Even in the case of **Mohammad Shujat Ali and others vs. Union of India and others** reported in **AIR 1974 SC 1631** in para-13, the Supreme Court has observed that,

> "It must be noted that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government."

17. Similarly, the Hon'ble Apex Court in the case of **State of Rajasthan and others vs. Lata Arun** reported in **2002 AIR SCW 2966** in para-12 held that,

> "the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for Courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority."

In the present case, the petitioners are not able to produce any certificate issued by the State of Madhya Pradesh or Chhattisgarh approving the said certificate equivalent to Degree.

18. The learned counsel for the petitioners submitted that the petitioner (Harpal Singh Saini), at Serial No.89 of the gradation list (Annexure P-9) issued by the erstwhile State of Madhya Pradesh and at Serial No.8

of the gradation list (Annexure P-8) issued by the State of Chhattisgarh, has been shown as a Graduate, in the column of 'educational qualification'. Therefore, based on this, it is proved that the petitioner's certificate was recognised, as Degree and that cannot be changed. It is true that in the gradation lists (Annexures P-8 & P-9) the educational qualification of the petitioner has been shown as Graduate. As per the learned counsel for the petitioners this was mentioned based on the certificate obtained by the petitioner from the Institute (AMIME). Therefore, the petitioners should be considered as Graduates. This argument of the learned counsel for the petitioners is without force for the reason that in the first instance, as has been mentioned above, the State of Madhya Pradesh or Chhattisgarh has not approved the certificates obtained by the petitioners and considered them equivalent to Degree. Therefore, even if in the column of educational qualifications of the gradation list the petitioners have been shown as Graduates that does not create defensible right in favour of the petitioners, unless and until there is a circular or notification by the Government recognizing these certificates as equivalent to Degree. Moreover, there is nothing on record, which goes to show that what was the basis of recording the educational qualification of the petitioners as Degree holders and under whose orders it was recorded, no material is available on the record to that effect. Such gradation lists are always subject to revision. On verification/scrutiny, if any valid objections are raised by the office or by any person whose rights are affected then this can be rectified. Merely entering the educational qualification of the petitioners as Degree holders in the gradation list does not entitle the petitioners to treat them as Degree holders for all purposes and always. Moreover, the basis for this is the AMIME certificate obtained by the petitioner and that certificate has not been approved either by the State of Madhya Pradesh or by the State of Chhattisgarh. Therefore, the foundation of the petitioners claim stands demolished.

19. Even the respondents have very categorically stated in the return that when they came to know about the fact that in the column of educational qualification of the gradation list, 'Degree' has been incorrectly recorded, they immediately made scrutiny of the records and when they reached the conclusion that the petitioners (Harpal Singh Saini & Sanjay Kumar Tiwari) are not degree holders they passed the impugned order, that too after giving an opportunity to the petitioners. A perusal of Annexure R-1, in which both the petitioners have signed, shows that enquiry was conducted and opportunity to the petitioners was given and they have admitted that there are no orders of the Government treating the certificate of AMIME as equivalent to Degree.

20. In view of this, the petitioners have no case. The gradation list prepared cannot confer any legal right on the petitioners and the same was always subject to correction, if any mistake is found as has been held by the Hon'ble Apex Court in the case of **R.S. Ajara and others** vs. **State of Gujarat and others** reported in **(1997) 3 SCC 641** in para-21 that the seniority list did not confer any right, as the seniority list was challenged before the Court. In this case also when the mistake was detected by the respondents they conducted an enquiry. Even the petitioners were invited and given opportunity to show any order of the Government by which the certificates obtained by them have been approved and treated equivalent to Degree, but they were not able to show any such order.

21. Therefore, in the circumstances, it cannot be said that the principles of natural justice are violated or the decision of the respondents is arbitrary or illegal. The judgment cited by the learned counsel for the petitioners i.e. in the case of **Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others** reported in **AIR 1978 SC 851** that without giving opportunity the decision violates the principles of natural justice, does not help the petitioners, because in

the present cases which are before the Court, opportunity was given to the petitioners and they were not able to show any order/notification of the Government. Similarly, the principle enunciated by the Hon'ble Apex Court in the case of **Kumari Shrilekha Vidyarthi etc. etc., vs. State of U.P. and others** reported in **AIR 1991 SC 537** is also of no help to the petitioners.

22. As far as the question of protection under the M.P. Reorganization Act, 2000, is concerned, since the petitioners have not been able to establish that the State of Madhya Pradesh has approved or recognized the said certificate (AMIME) as equivalent to Degree, this contention is without any substance and requires no further examination.

23. In view of the above discussion, the petitioner's case (W.P.No.1920 of 2003) is without merit and without force. The same is liable to be dismissed and it is accordingly, dismissed.

24. W.P.No.1921 of 2003 has been filed by petitioner Sanjay Kumar Tiwari. He has also challenged the order dated 21.11.2002 by which his educational qualification has been amended. In this case also the petitioner obtained a certificate of AMIME, which Harpal Singh Saini in W.P.No.1920 of 2003 had obtained. Since for the reasons mentioned in the earlier part of this order that the said certificate has not been approved by the State of Madhya Pradesh or Chhattisgarh to be treated equivalent to the Engineering Degree without which the petitioner is not entitled for any relief in the matter, this petition also stands dismissed.

Sd/-
L.C.BHADOO
Judge

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